

In re) Fair Hearing No. 15,505
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Appeal of)

The petitioner appealed a decision of the Office of Child Support (OCS) to the Human Services Board which OCS moved to dismiss for lack of jurisdiction.

1. The parties do not dispute the facts involved in the process of this appeal. On March 20, 1998, an administrative review meeting was conducted at the request of the petitioner by the Office of Child Support. The petitioner's appeal concerned the validity of an order issued by the Washington Family Court in 1994 concerning a support debt owed by the petitioner to OCS. The petitioner claimed that she had asked the Family Court to be heard on that award but was not given a hearing. OCS concluded that the court order was valid and thus enforceable by OCS. A written decision was issued to the petitioner containing the above conclusions dated March 26, 1998. That decision advised the petitioner that she could appeal OCS's decision to the Family Court in Washington County.

2. A cover letter accompanying the above decision told the petitioner that the appeal of the decision was to the Human Services Board. The petitioner appealed to the

Board, which appeal was received on May 20, 1998, claiming that OCS was incorrect in its interpretation of the Court's order.

3. On June 3, 1998, OCS moved to dismiss the petitioner's appeal, claiming that the Board is without jurisdiction to hear the matter and that it should be before the family court magistrate. OCS explained that the contradiction in the appeal notices occurred because the wrong format was used in the cover letter and that the notice advising of appeal rights to the family court was in fact correct. At the hearing, OCS agreed that it would not oppose as untimely any filing the petitioner made with the family court based on the misinformation in the cover letter.

4. The petitioner opposed the Motion to Dismiss saying that she was appealing OCS' flawed interpretation of and compliance with the court order.

ORDER

The petitioner's appeal is dismissed for lack of jurisdiction.

REASONS

In 1997, the statute governing grievance procedures within the Office of Child Support was amended by adding the following:

(d) All final decisions of the office of child support are appealable de novo to the family court magistrate.

However, the statute governing jurisdiction of the Human Services Board was not repealed or amended when the new law was passed and continues to provide as follows:

(a) An applicant for or a recipient of assistance, benefits or social services from . . . the office of child support . . . may file a request for a fair hearing with the human services board. An opportunity for a fair hearing will be granted to any individual requesting a hearing because his or her claim for assistance, benefits or services is denied, or is not acted upon with reasonable promptness; or because the individual is aggrieved by any other agency action affecting his or her receipt of assistance, benefits or services. . .; or because the individual is aggrieved by agency policy as it affects his or her situation.

The OCS grievance statute clearly places jurisdiction over all decisions made by OCS in the family court without exception. That statute directly conflicts with 3 V.S.A. 9

3091(a) which allows appeals of OCS decisions in certain instances when they deny claims for assistance, benefits or services or adopt policies which affect individuals. OCS has attempted to reconcile this conflict by saying that 33 V.S.A. § 4108(d) applies when the appeal involves interpretation or implementation of court orders by OCS and that 3 V.S.A. § 3091(a) applies when the appeal involves services offered (or not offered) by OCS.

The Department's attempt to reconcile these conflicting regulations makes sense with regard to the powers of the two tribunals. Even before this recent amendment, the Human Services Board generally declined to rule on appeals involving the interpretation and enforcement of family court orders based on principles of jurisdiction and collateral attack. See e.g. Fair Hearing No. 12,936. Such cases were typically referred back to the Court which made the order. This amendment in the grievance statute cures the problem which arose in appeals attacking court orders but creates confusion as to whether the Human Services Board can hear any appeals of decisions by OCS.¹ However, that is a question that need not be reached here because this appeal which involves the validity of a court order is clearly beyond the authority of this tribunal and is most

¹ It is hard to imagine that the legislature would expect the family court to hear appeals of grievances by individuals regarding OCS services. The removal of this conflict by the legislature would certainly be highly desirable.

appropriately brought before the family court which made that order.

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